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8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2003-16

13 DAVID ALAN THATCHER  
6843 La Valle Plateada  
14 Rancho Santa Fe, CA 92067

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Certified Public Accountant Certificate  
No. CPA 29949

16  
17 Respondent.

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
20 proceeding that the following matters are true:

21 PARTIES

22 1. Carol Sigmann (Complainant) is the Executive Officer of the California  
23 Board of Accountancy. She brought this action solely in her official capacity and is represented  
24 in this matter by Bill Lockyer, Attorney General of the State of California, by Linda K.  
25 Schneider, Deputy Attorney General.

26 2. David Alan Thatcher (Respondent) is represented in this proceeding by  
27 attorney, Alice L. Jensen, of Clifford Chance US LLP, whose address is, One Market, Steuart  
28 Tower Suite 400, San Francisco, CA 94105-1420.

1                   3.       On or about May 30, 1980, the California Board of Accountancy issued  
2 Certified Public Accountant Certificate No. CPA 29949 to David Alan Thatcher. The Certificate  
3 expired on January 31, 2001, and has not been renewed.

4   JURISDICTION

5                   4.       Accusation No. AC-2003-16 was filed before the California Board of  
6 Accountancy (Board), Department of Consumer Affairs, and is currently pending against  
7 Respondent. The Accusation and all other statutorily required documents were properly served  
8 on Respondent on January 8, 2003. Respondent timely filed his Notice of Defense contesting the  
9 Accusation. A copy of Accusation No. AC-2003-16 is attached as Exhibit A and is incorporated  
10 herein by reference.

11   ADVISEMENT AND WAIVERS

12                   5.       Respondent has carefully read, fully discussed with counsel, and  
13 understands the charges and allegations in Accusation No. AC-2003-16. Respondent also has  
14 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
15 Settlement and Disciplinary Order.

16                   6.       Respondent is fully aware of his legal rights in this matter, including the  
17 right to a hearing on the charges and allegations in the Accusation; the right to confront and  
18 cross-examine the witnesses against him; the right to present evidence and to testify on his own  
19 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
20 production of documents; the right to reconsideration and court review of an adverse decision;  
21 and all other rights accorded by the California Administrative Procedure Act and other applicable  
22 laws.

23                   7.       Respondent voluntarily, knowingly, and intelligently waives and gives up  
24 each and every right set forth above.

25       ///

26       ///

27       ///

28       ///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in  
3 Accusation No. AC-2003-16. Respondent agrees that his Certified Public Accountant Certificate  
4 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set  
5 forth in the Disciplinary Order.

6 9. Respondent understands that by signing this stipulation he enables the  
7 Board to issue an order revoking his Certified Public Accountant Certificate without further  
8 process.

9 OTHER MATTERS

10 10. The admissions made by Respondent herein are only for the purposes of  
11 this proceeding, or any other proceedings in which the California Board of Accountancy or other  
12 professional licensing agency is involved, and shall not be admissible in any other criminal or  
13 civil proceeding.

14 11. Respondent fully understands and agrees that if he ever files an application  
15 for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a  
16 petition for reinstatement. Respondent must comply with all the laws, regulations and  
17 procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all  
18 of the charges and allegations contained in Accusation No. AC-2003-16 shall be deemed to be  
19 true, correct, and admitted by Respondent when the Board determines whether to grant or deny  
20 the petition.

21 CONTINGENCY

22 12. This stipulation shall be subject to approval by the California Board of  
23 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of  
24 the Board may communicate directly with the Board regarding this stipulation and settlement,  
25 without notice to or participation by Respondent or his counsel. By signing the stipulation,  
26 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind  
27 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt  
28 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall

1 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
2 between the parties, and the Board shall not be disqualified from further action by having  
3 considered this matter.

4 13. The parties understand and agree that facsimile copies of this Stipulated  
5 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
6 force and effect as the originals.

7 14. In consideration of the foregoing admissions and stipulations, the parties  
8 agree that the (Board) may, without further notice or formal proceeding, issue and enter the  
9 following Order:

10 **ORDER**

11 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA  
12 29949 issued to Respondent David Alan Thatcher is revoked.

13 1. Respondent shall lose all rights and privileges as a certified public  
14 accountant in California as of the effective date of the Board's Decision and Order.

15 2. Respondent shall cause to be delivered to the Board both his wall  
16 certificate and pocket license on or before the effective date of the Decision and Order.

17 3. In the event Respondent ever files an application for licensure or a petition  
18 for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement.  
19 Respondent must comply with all the laws, regulations and procedures for reinstatement of a  
20 revoked license in effect at the time the petition is filed, and all of the charges and allegations  
21 contained in Accusation No. AC-2003-16 shall be deemed to be true, correct, and admitted by  
22 Respondent when the Board determines whether to grant or deny the petition.

23 4. Respondent shall pay the Board its costs of investigation and enforcement  
24 in the amount of \$2,585.00 (Two Thousand Five Hundred Eighty Five Dollars) prior to issuance  
25 of a new or reinstated license.

26 ///

27 ///

28 ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Alice L. Jensen. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 2/28/03

  
DAVID ALAN THATCHER  
Respondent

I have read and fully discussed with Respondent David Alan Thatcher, CPA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ALICE L. JENSEN  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: \_\_\_\_\_

BILL LOCKYER, Attorney General  
of the State of California

\_\_\_\_\_  
LINDA K. SCHNEIDER  
Deputy Attorney General  
Attorneys for Complainant

DOJ Docket Number: 03541110-SD2002AD0898



**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID ALAN THATCHER

CPA Certificate No. 29949

Respondent.

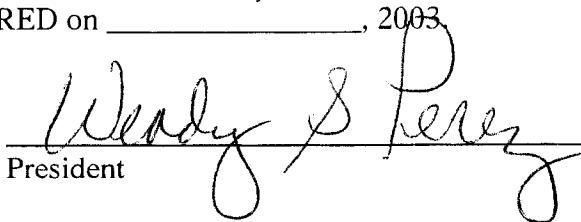
Case No.AC-2003-16

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on April 25, 2003.

It is so ORDERED on March 22, 2003.

  
\_\_\_\_\_  
President

For The CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

**Exhibit A**  
**Accusation No. AC-2003-16**



1 BILL LOCKYER, Attorney General  
of the State of California  
2 LINDA K. SCHNEIDER, State Bar No. 101336  
Deputy Attorney General  
3 California Department of Justice  
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9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2003-16

13 DAVID ALAN THATCHER  
6843 La Valle Plateada  
14 Rancho Santa Fe, CA 92067

**A C C U S A T I O N**

15 Certified Public Accountant Certificate  
No. CPA 29949

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Carol Sigmann (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Officer of the California Board of Accountancy, Department of  
23 Consumer Affairs.

24 2. On or about May 30, 1980, the California Board of Accountancy issued  
25 Certified Public Accountant Certificate Number CPA 29949 to David Alan Thatcher  
26 (Respondent). The Certified Public Accountant Certificate expired on January 31, 2001, and has  
27 not been renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs under the authority of the below mentioned statutes and regulations.<sup>1</sup>

4. Section 5100 of the Code states:

After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

"(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

" . . . "

5. Section 5106 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment."

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1. All statutory references are to the Business and Professions Code ("Code") unless otherwise indicated.

6. Section 5107 of the Code provides, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate, found guilty of a felony in violation of section 5100, subdivision (a), to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited, to attorney's fees.

CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent has subjected his certificate to disciplinary action under Code section 5100, subdivision (a), in that he has been convicted of a felony that is substantially related to the qualifications, functions and duties of a certified public accountant. The circumstances are as follows:

a. Before the United States District Court, Northern District of California, in the case of *United States of America v. David Thatcher*, Case No. CR-02-0028 WHA, Respondent waived indictment and was charged in a one count information with conspiracy to commit securities fraud in violation of 18 U.S.C. Section 371.

b. On February 12, 2002, Respondent signed an Application for Permission to Enter a Guilty Plea and Plea Agreement. Also on February 12, 2002, in a change of plea hearing before the Honorable William Alsup, Judge, Respondent pled guilty to the felony of conspiracy to commit securities fraud in violation of 18 U.S.C. Section 371.

c. The circumstances of the crime are set forth fully in the Plea Agreement, attached hereto as Exhibit A, and incorporated herein by reference as though fully set forth.

d. Respondent's felony conviction for conspiracy to commit securities fraud in violation of 18 U.S.C. Section 371 is substantially related to the qualifications, functions and duties of a certified public accountant.

///

///

1 PRAYER

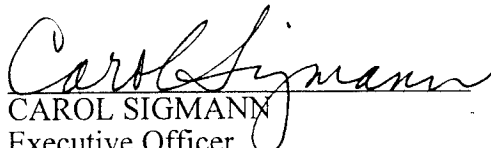
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking or suspending Certified Public Accountant Certificate Number  
5 CPA 29949, issued to David Alan Thatcher;

6 2. Ordering David Alan Thatcher to pay the California Board of  
7 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to  
8 Business and Professions Code section 5107;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: December 31, 2002

11  
12   
13 CAROL SIGMANN  
14 Executive Officer  
15 California Board of Accountancy  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant  
19  
20  
21  
22  
23  
24  
25  
26

27 03541110-SD2002AD0898  
28

1 DAVID W. SHAPIRO (NYSBN 2054054)  
United States Attorney

2 J. DOUGLAS WILSON (PA BAR 44915)  
3 Chief, Criminal Division

4 DAVID L. ANDERSON (CSBN 149604)  
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055  
6 San Francisco, California 94102  
7 Telephone: (415) 436-7153

8 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 DAVID A. THATCHER,

18 Defendant.  
19

No. CR 02-0028 WTTA

PLEA AGREEMENT

20 I, DAVID A. THATCHER, and the United States Attorney's Office for the  
21 Northern District of California (hereafter "the government") enter into this written plea  
22 agreement (the "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of  
23 Criminal Procedure:

24 The Defendant's Promises

25 1. I agree to plead guilty to count one of the captioned indictment charging me  
26 with conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371. I agree that  
27 the elements of the offense and the maximum penalties are as follows: (1) there was an  
28 agreement between two or more persons to commit securities fraud as charged in the

PLEA AGREEMENT

FILED

2002 FEB 12 PM 4:00

RICHARD W. WIEKING

U.S. DISTRICT COURT

I hereby certify that the an  
instrument is a true and correct  
of the original on file in my o  
ATTEST:

RICHARD W. WIEKING  
Clerk, U.S. District Court  
Northern District of California  
By Richard W. Wieking  
Deputy Clerk  
Date June 4, 2002

1 indictment; (2) the defendant became a member of the conspiracy knowing of its object  
2 and intending to help accomplish it; and (3) one of the members of the conspiracy  
3 performed at least one overt act for the purpose of carrying out the conspiracy.

- |   |    |                                 |           |
|---|----|---------------------------------|-----------|
| 4 | a. | Maximum prison sentence         | 5 years   |
| 5 | b. | Maximum fine                    | \$250,000 |
| 6 | c. | Maximum supervised release term | 3 years   |
| 7 | d. | Mandatory special assessment    | \$100     |

8 2. I agree that I am guilty of the offense to which I will plead guilty, and I  
9 agree that the following facts are true:

10 From January 2000 to February 2001, I was the President of Critical Path, Inc.  
11 During the third and fourth quarters of 2000, I participated in a criminal conspiracy at  
12 Critical Path. The object of this conspiracy was to report false revenues to meet Critical  
13 Path's predicted financial results. Other members of Critical Path's top management  
14 team participated in this conspiracy with me.

15 **I. Third Quarter of 2000**

16 At the end of the third quarter of 2000, Critical Path was short of its revenue goals  
17 for the quarter. To meet those revenue goals, Critical Path improperly reported revenue  
18 from transactions with Peregrine Systems, Inc., International Computers Limited (also  
19 known as ICL), and StarMedia Network, Inc.

20 **A. Peregrine**

21 Critical Path agreed to a software exchange with Peregrine. From Critical Path's  
22 perspective, this transaction was driven by the need to report revenue during the third  
23 quarter. At the end of September, 2000, Critical Path bought software from Peregrine,  
24 and Peregrine bought software from Critical Path. To avoid the appearance that the  
25 transaction was a software swap, Critical Path and Peregrine prepared separate contracts  
26 for each purchase, each paid the full amounts owed, and made payment to each other on  
27 different days.  
28

1 I participated in the negotiations with Peregrine for this software swap. I spoke  
2 with the CEO of Peregrine about the software swap. I also helped to set the value of the  
3 transaction. By structuring the software swap as two independent transactions, I realized  
4 that I and others working on the deal were consciously avoiding disclosure of the true  
5 nature of the transaction. By concealing the true nature of the transaction, I, along with  
6 others in senior management, participated in an effort to mislead auditors and others  
7 about the facts which I knew would be relied on in deciding the propriety of recognizing  
8 revenue from this transaction.

#### 9 B. ICL

10 ICL claimed that it was owed \$8.7 million by PeerLogic, Inc. When Critical Path  
11 acquired PeerLogic during the third quarter of 2000, Critical Path assumed this  
12 obligation. ICL proposed that Critical Path pay \$6 million to extinguish the claim.  
13 Instead, Critical Path paid ICL the full \$8.7 million, and ICL paid back \$2.7 million to  
14 Critical Path, ostensibly as a software-licensing fee. To avoid the appearance that the  
15 settlement agreement and the software-licensing agreement were related, the agreements  
16 were prepared as separate documents, which did not refer to each other.

17 Because the ICL transaction was negotiated at the very end of the third quarter,  
18 ICL did not actually receive the software until after the third quarter ended. Nonetheless,  
19 Critical Path recognized the revenue from the software-licensing agreement during the  
20 third quarter.

21 Although I did not proposed or structure the ICL transaction, I was aware that the  
22 transaction was structured with the intent of misleading auditors and others about facts  
23 which I knew would be relied on in deciding the propriety of recognizing \$2.7 million in  
24 software-licensing revenue from this transaction.

#### 25 C. StarMedia

26 On September 30, 2000, Critical Path entered into a software-licensing agreement  
27 with StarMedia. At the same time, Critical Path executed a side letter amending the  
28 agreement and extending StarMedia's payment terms. I signed the side letter for Critical

1 Path. Although the existence of the side letter was known by others within the Company,  
2 I did not provide the side letter to Critical Path's accounting or legal department. I  
3 believed that fully disclosing StarMedia's extension of payment terms to Critical Path's  
4 auditors might have prevented Critical Path from recognizing third-quarter revenue for  
5 this transaction. I knew that by executing the side letter and then not forwarding it to  
6 Critical Path's accounting department, I was participating in an effort to mislead Critical  
7 Path's auditors and others about facts which I knew would be relied on in reviewing  
8 Critical Path's revenue-recognition decisions for the third quarter of 2000.

9 **D. Critical Path's Third-Quarter Results and Fourth-Quarter Goals**

10 Improperly recognizing revenue for the Peregrine, ICL and StarMedia transactions  
11 allowed Critical Path to exceed its financial goals for the third quarter of 2000. With my  
12 knowledge and approval, the Company falsely represented its third-quarter revenues in a  
13 press release dated October 19, 2000, and a Form 10-Q filed with the SEC on November  
14 14, 2000. The Company set higher financial goals for the fourth quarter of 2000.

15 **II. Fourth Quarter of 2000**

16 As the fourth quarter of 2000 drew to a close, Critical Path was short of its  
17 quarterly financial goals. In an attempt to meet those financial goals, Critical Path again  
18 improperly reported revenues that had not, in fact, been earned.

19 **A. Bestseats**

20 Critical Path executed a software-licensing agreement with Bestseats, Inc. I was  
21 aware of this agreement and did not believe in good faith that Bestseats could pay for it.  
22 In mid-January, 2001, as Critical Path's auditors were reviewing Bestseats' ability to pay,  
23 the CEO of Bestseats sent Critical Path an email describing Bestseats' capitalization. I  
24 altered the email to make it appear that Bestseats had more money than the email  
25 described, and forwarded the email to others at Critical Path in an effort to mislead them  
26 so that revenue would be recognized for this transaction.



1           **B.     Storerunner**

2           Critical Path executed a software-licensing agreement with Storerunner Network,  
3 Inc. I was aware of this agreement and did not believe in good faith that Storerunner  
4 would pay for it. Because I did not have a good-faith belief that Storerunner would pay  
5 for the agreement, I realized that revenue from the transaction should not have been  
6 recognized.

7           **C.     ENA**

8           Critical Path executed a software-licensing agreement with Educational Networks  
9 of America, a company also known as ENA. Although ENA expressed a legitimate  
10 interest in purchasing Critical Path software, ENA was reluctant to enter into an  
11 agreement with Critical Path during the fourth quarter of 2000 because it was concerned  
12 about the availability of funding to pay for the transaction.

13           Critical Path did eventually execute an agreement with ENA, but it was not  
14 executed until after the fourth quarter ended. To overcome ENA's concern about its own  
15 funding, Critical Path issued a side letter to ENA that allowed ENA an out if it did not  
16 receive its funding.

17           I realized that Critical Path could not properly recognize revenue for the ENA  
18 agreement during the fourth quarter of 2000. The transaction was not completed during  
19 that quarter, and revenue could not be recognized anyway, so long as the side letter was  
20 outstanding.

21           3.     I agree to give up all rights that I would have if I chose to proceed to trial,  
22 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
23 examine government witnesses; to remain silent or testify; to move to suppress evidence  
24 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
25 government, as may be limited by United States v. Ruiz, 241 F.3d 1157 (9<sup>th</sup> Cir. 2001);  
26 and to pursue any affirmative defenses and present evidence.

27           4.     I agree to give up my right to appeal my conviction, the judgment, and  
28 orders of the Court. I also agree to waive any right I may have to appeal my sentence.

1           5.     I agree not to file any collateral attack on my conviction or sentence,  
2 including a petition under 28 U.S.C. § 2255, at any time in the future after I am  
3 sentenced, except for a claim that my constitutional right to the effective assistance of  
4 counsel was violated.

5           6.     I agree not to ask the Court to withdraw my guilty plea at any time after it is  
6 entered.

7           7.     In return for the government's promises set out below, I agree to pay  
8 restitution for all the losses caused by all the schemes or offenses with which I was  
9 charged in this case, and I agree that the amount of restitution will not be limited to the  
10 loss attributable to the count(s) to which I am pleading guilty, pursuant to 18 U.S.C. §  
11 3663(a)(3). I agree that I will make a good faith effort to pay any fine, forfeiture or  
12 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the  
13 Court, the government, or the U.S. Probation Office, provide accurate and complete  
14 financial information, submit sworn statements and give depositions under oath  
15 concerning my assets and my ability to pay, surrender assets I obtained as a result of my  
16 crimes, and release funds and property under my control in order to pay any fine,  
17 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

18           8.     I agree to cooperate with the U.S. Attorney's Office before and after I am  
19 sentenced. My cooperation will include, but will not be limited to, the following:

- 20           a.     I will respond truthfully and completely to any and all questions put to me,  
21 whether in interviews, before a grand jury or at any trial or other  
22 proceeding;  
23           b.     I will provide all documents and other material asked for by the  
24 government;  
25           c.     I will testify truthfully at any grand jury, court or other proceeding as  
26 requested by the government;  
27           d.     I will surrender any and all assets acquired or obtained directly or indirectly  
28 as a result of my illegal conduct;  
            e.     I will request continuances of my sentencing date, as necessary, until my  
cooperation is completed;

1 f. I will tell the government about any contacts I may have with any  
2 co-defendants or subjects of investigation, or their attorneys or individuals  
employed by their attorneys;

3 g. I will not reveal my cooperation, or any information related to it, to anyone  
4 without prior consent of the government.

5 9. I agree that the government's decision whether to file a motion pursuant to  
6 U.S.S.G. § 5K1.1, as described in the government promises section below, is based on its  
7 sole and exclusive decision of whether I have provided substantial assistance and that  
8 decision will be binding on me. I understand that the government's decision whether to  
9 file such a motion, or the extent of the departure recommended by any motion, will not  
10 depend on whether convictions are obtained in any case. I also understand that the Court  
11 will not be bound by any recommendation made by the government.

12 10. I agree not to commit or attempt to commit any crimes before sentence is  
13 imposed or before I surrender to serve my sentence; violate the terms of my pretrial  
14 release (if any); intentionally provide false information or testimony to the Court, the  
15 Probation Office, Pretrial Services, or the government; or fail to comply with any of the  
16 other promises I have made in this Agreement. I agree that, if I fail to comply with any  
17 promises I have made in this Agreement, then the government will be released from all of  
18 its promises, but I will not be released from my guilty plea.

19 11. If I am prosecuted after failing to comply with any promises I made in this  
20 Agreement, then (a) I agree that any statements I made to any law enforcement or other  
21 government agency or in Court, whether or not made pursuant to the cooperation  
22 provisions of this Agreement, may be used in any way; (b) I waive any and all claims  
23 under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal  
24 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule,  
25 to suppress or restrict the use of my statements, or any leads derived from those  
26 statements; and (c) I waive any defense to any prosecution that it is barred by a statute of  
27 limitations, if the limitations period has run between the date of this Agreement and the  
28 date I am indicted.

1           12. I agree that this Agreement contains all of the promises and agreements  
2 between the government and me, and I will not claim otherwise in the future.

3           13. I agree that this Agreement binds the U.S. Attorney's Office for the  
4 Northern District of California only, and does not bind any other federal, state, or local  
5 agency.

6 The Government's Promises

7           14. The government agrees to move to dismiss any open charges pending  
8 against the defendant in the captioned indictment at the time of sentencing.

9           15. The government agrees not to file or seek any additional charges against the  
10 defendant that could be filed as a result of the investigation that led to the pending  
11 indictment.

12           16. The government agrees not to use any statements made by the defendant  
13 pursuant to this Agreement against him, unless the defendant fails to comply with any  
14 promises in this agreement. The government may, however, tell the Court and the U.S.  
15 Probation Department about the full extent of the defendant's criminal activities in  
16 connection with the calculation of the Sentencing Guidelines.

17           17. If, in its sole and exclusive judgment, the government decides that the  
18 defendant has cooperated fully and truthfully, provided substantial assistance to law  
19 enforcement authorities within the meaning of U.S.S.G. § 5K1.1, and otherwise complied  
20 fully with this Agreement, it will file with the Court a motion under § 5K1.1 and/or 18  
21 U.S.C. § 3553 that explains the nature and extent of the defendant's cooperation and  
22 recommends a downward departure.

23           18. Based on the information now known to it, the government will not oppose  
24 a downward adjustment of three levels for acceptance of responsibility under U.S.S.G. §  
25 3E1.1.

26 The Defendant's Affirmations

27           19. I confirm that I have had adequate time to discuss this case, the evidence,  
28 and this Agreement with my attorney, and that he has provided me with all the legal

1 advice that I requested.

2 20. I confirm that while I considered signing this Agreement and, at the time I  
3 signed it, I was not under the influence of any alcohol, drug, or medicine.

4 21. I confirm that my decision to enter a guilty plea is made knowing the  
5 charges that have been brought against me, any possible defenses, and the benefits and  
6 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty  
7 is made voluntarily, and no one coerced or threatened me to enter into this agreement.

8  
9 Dated: 2/12/02

  
DAVID A. THATCHER  
Defendant

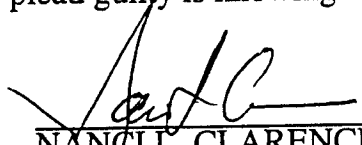
11 DAVID W. SHAPIRO  
12 United States Attorney

13  
14 Dated: 2/12/02

  
DAVID L. ANDERSON  
Assistant United States Attorney

15  
16  
17  
18 I have fully explained to my client all the rights that a criminal defendant has and  
19 all the terms of this Agreement. In my opinion, my client understands all the terms of this  
20 Agreement and all the rights he is giving up by pleading guilty, and, based on the  
21 information now known to me, his decision to plead guilty is knowing and voluntary.

22  
23 Dated: 2/12/02

  
NANCI L. CLARENCE  
Attorney for Defendant